

After deciding a special needs trust is appropriate, one of the most difficult choices parents make is the nomination of the trustee. Often a family member, especially a parent, will want to serve in that capacity. They have choices depending on the amount going into the trust, from trust department of banks to legal counsel, non-profit corporations, professional fiduciaries and family or friends.

If the trust is large enough, trust departments of banks will compete for the opportunity to act as trustee, especially in this economic market. There may be an opportunity to reduce the fiduciary fees they would charge for the opportunity to act as trustee. There are national banks and even life insurance companies that market their expertise to special needs planners. One advantage to a bank is that as a large institution it may provide better customer service in a predictable heavily regulated manner. In addition, rarely does a bank have to file a surety bond, which saves the trust from otherwise having to pay premiums. However, if there is a difference of opinion between the beneficiary and the bank trustee, it may be very difficult to move the trust to a different trustee. Courts often favor local banks over national corporations, especially if they do not have a physical presence in the state.

Some other choices for professional fiduciaries are non-profit organizations which may specialize in special needs trust administration or may offer such services through grant programs, like ARC of Macomb in Michigan. Often, the drafting attorney will be willing to serve as trustee or has knowledge of other attorneys and organizations specializing in this type of trust administration. A judge or Guardian ad Litem may have special knowledge or experience with a particular professional fiduciary, and may appoint them despite other recommendations or family preference.

Most often family members or lay people, in general, are not the best option. The policies regarding allowable distributions change frequently and vary state to state. You can pay a family member for care services in some states, as you can in Michigan, but not others without penalty. In addition, there are tax considerations and investment issues to consider. Special needs trusts are complex to administer, and professional administration, even in light of the costs involved, is usually for the best. Potential family members as Trustees usually fall into two categories: the busy professional or the unsophisticated but willing. Neither are good choices. The busy professional is just that. Too busy. The willing but unsophisticated person is not a good choice as the potential for mistakes without professional guidance is too great a risk. In addition, if a bond is required the client may have trouble qualifying. Bond companies look at credit scores as a strong indicator of an individual's fitness to serve as trustee, and if there are blemishes they will decline the application. If there is no court supervision or bond, there is no recourse for the disabled beneficiary if a family member improperly distributes funds or mismanages investments, causing a loss of benefits or loss of principal.

The plaintiff or their next friend may not have full control over the nomination of trustee. The Guardian ad Litem, trial court judge or probate court judge may not agree with the nomination and may appoint a different party altogether. The wants and needs of the beneficiary should be given priority, balanced with accountability, professionalism, experience, costs and advocacy abilities of the potential trustee.